IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 21034 of 2007(D)

PETITIONER:

HAZEENA, W/O. AZAD,
4/18, NEDUNGODE, CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS:

---

1. CHITTUR THATHAMANGALAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, CHITTUR TALUK,
PALAKKAD DISTRICT.

2. THE MUNICIPAL COUNCIL,
CHITTUR THATHAMANGALAM MUNICIPALITY,
REPRESENTED BY ITS CHAIRMAN, CHITTUR TALUK,
PALAKKAD DISTRICT.

3. NARAYANANKUTTY, AGED 68 YEARS,
S/O. ACHUTHAN NAIR, THEKKEDATH HOUSE, ANICODE,
CHITTUR TALUK, PALAKKAD DISTRICT.

R1 & R2 BY ADV. SRI.A.SREERAMAKRISHNAN
R3 BY ADV.SRI.SANTHEEP ANKARATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.21034 of 2007

- -

Dated: 17th September, 2007

JUDGMENT

Heard Mr.Mohanakannan, counsel for the petitioner, Mr.A.Sree Ramakrishnan, Standing Counsel for the 1st respondent-Municipality and Mr.Santheep Ankarath, counsel for the third respondent.

2. The grievance of the petitioner is that on the reason that the petitioner has instituted a suit for fixation of boundaries against the third respondent, the Municipality is refusing to assign door number to the first floor of his building. Counsel for the petitioner submitted that the ground floor and the first floor were constructed by the petitioner on the strength of building permits validly issued by the Municipality. Number was also assigned to the ground floor. The stand of the Municipality is that on account of the boundary dispute which has cropped up subsequently the Municipality is unable to ascertain whether the set back rules have been complied with in the matter of construction of the first floor is not reasonable.

3. Mr.Sree Ramakrishnan would draw my attention to the relevant rules of KMBR, 1999 and submit that without identifying the correct boundary, it may not be possible for the Municipality to verify whether the set back rules have been complied with while carrying

out the construction. At the time when the number was assigned to the ground floor, there was no boundary dispute between the parties and on the petitioner's own showing there exists a boundary dispute between him and the third respondent over the common boundary between their properties and the civil court is in seisin of the matter. Unless and until the civil court settles that disputes and fixes the boundary, the Municipality should not be insisted upon to assign door number since there is a possibility that the civil court will fix another line as the correct boundary and if measurements are taken with reference to that line, the constructions put up by the petitioner will be seen to offend the set back rules.

3. Learned counsel for the third respondent submitted that the suit for fixation of boundary was filed by the petitioner himself and that since the civil court is in seisin of the matter, the petitioner should not be granted relief till the boundary is fixed by the civil court.

4. Having considered the rival submissions, I am of the view that the Municipality is not justified in declining to assign door number to the first floor of his building which has been put up on the basis of a building permit which relates to the ground and the first

floor. Obviously the building permit was granted in respect of ground and the first floor treating the boundary line shown in the plan submitted by the petitioner as the correct boundary line. The ground floor constructed on the strength of that permit stands already numbered. Hence, it is not difficult to accept the argument of the petitioner that the ground floor does not offend the statutory set back rules. The first floor which is constructed upon the ground floor also cannot offend those rules. In any view, the decision of the Municipality to assign door number will be subject to the judgment to be rendered by the civil court. If that judgment fixes a boundary line on the basis of which the construction of the petitioner (the first floor) is seen to violate the set back rules, the same shall entail liability of the said building, i.e., the said floor to be demolished and removed. Under these circumstances, I am of the view that the Municipality is liable to assign door number to the first floor of the petitioner's building subject to the outcome of the ongoing civil suit filed by the petitioner against the third respondent.

5. Accordingly, the Writ Petition will stand allowed and the Municipality is directed to assign door number to the first floor of the petitioner's building treating the boundary shown in the plan on the

basis of which the building permit was issued as the correct boundary line provisionally and subject to the result of the civil suit O.S.No.463 of 2006 of the Munsiff's court, Chittoor. Numbering of the first floor shall be made by the Municipality within three weeks of the petitioner producing copy of this judgment. But the petitioner is reminded that in case the civil court verdict fixes another boundary line and it is seen on the basis of measurements as per that boundary lines that the constructions offends the set back rules, he stands the risk of the constructions being demolished by the Municipality.

srd **PIUS C.KURIAKOSE, JUDGE**